IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. : 1632 of 2002
Reserved on: 6.12.2007
Date of decision : 26.12.2007

Bhup Singh. …Petitioner.

Versus

The Director of Consolidation & others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1] *yes*

For the petitioner : Mr. Rajender Sharma, Advocate vice Pt. Om Parkash Sharma, Advocate.

For the respondent No.1 : Mr. M.A.Khan, Dy. Advocate General

For the respondents No. 2 and 3. : Mr. Ajay Kumar, Advocate.

For the respondents No. 4 to 13. : Mr. Y.Paul, Advocate.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this writ petition are that consolidation proceeding took place in village Sadda, Tehsil Jaisinghpur, Distt. Kangra, H.P. in the year 1986-87. The respondent No.2 preferred a revision before the Additional Director, Consolidation on 12th August, 1997. The revision petition was accepted by the Additional Director, Consolidation on 29th December, 2001, whereby he directed the Consolidation Officer, Hamirpur to prepare the *Tartim* and *Tatima*.

Mr. Rajender Sharma, Advocate appearing on behalf of the petitioner had strenuously argued that the revision petition filed by respondent No.2 after a period of 10 years was not maintainable and the learned Additional Director

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? no.

Consolidation of Holdings had exceeded his jurisdiction. He further contended that the order dated 29th December, 2001 is not a speaking order.

The ld. Advocate General Mr. M. S. Chandel, with Mr. Ajay Kumar, Advocate, have supported the order passed by the Additional Director, Consolidation dated 29.12.2001.

I have heard the learned counsel for the parties and perused the record carefully.

The consolidation proceedings took place in the revenue village Sadda, Tehsil Jaisinghpur in the year 1986-87. The revision petition has been preferred by respondent No.2 on 12th August, 1997. It will be apt to reproduce Section 54 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, before appreciating the submission of the parties. Section 54 reads thus:

> **"Powers of the State Government to call for proceedings – The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit:**
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> **Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.**

Even if no period of limitation has been prescribed under section 54 of the Act and the expression 'at any time' has been used but the power is to be exercised within a reasonable period. In the present case, the consolidation proceedings were concluded in the year 1986-87 but the revision petition has been preferred by respondent No.2 before the Additional Director Consolidation of holdings of 12th August, 1997. Consequently, it is held that the revising

petition preferred after a period of 10 years before the Additional Director Consolidation of Holdings was not maintainable. Moreover, Additional Director Consolidation of Holdings had not assigned any reason for exercising the revisional power after a period of 10 years. Respondent No.2 could file the revision petition within a period of 3-5 years. The other wholesome principle for filing the revision within the reasonable time is that the settled things should not be permitted to be unsettled.

Their Lordships of the Supreme Court have held in State ***of Punjab and Ors. Vs. Bhatinda District coop. Milk P.Union Ltd***. 2007 Volume 12 Scale 135 that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. The apex Court has held that 3 to 5 years should be a reasonable period when no limitation has been prescribed. Their Lordships of the Supreme Court have held as under:-

> **A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefore, the same would not mean that the suo moto power can be exercised at any time.**
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> **It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.**
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> **Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is fine years.**
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> **In The State of Orissa v. Debaki Debi and ors. Reported in (AIR 1964 SC 1413), on interpretation of the provisions of Section 12(6) of the Orissa Sales Tax Act, 1947, 36 months'**

time was considered to be the period of limitation for exercise of the revisional jurisdiction.

In S.B.Gurbaksh Singh v. Union of India and Ors. (1976 (37) STC 425), Untwalia J., speaking for the Bench, opined:

> **"Apropos the fourth and last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also; the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."**

Our attention has been drawn to a decision in Commissioner of Sales Tax, Orissa & Another v. M/s Halari Store etc. (1997)7 SCC 715) wherein this Court, while considering the provisions of Orissa Sales Tax Act, 1948 and the Rules framed thereunder, held:

> **"… But, the same is not the position where the Commissioner decides to exercise his suo motu revisional power to revise an appellate order. Significantly the words "on his own motion" occurring in the enactment are conspicuously present in the proviso the legislature has excluded the revisional jurisdiction of the Commissioner of Sales Tax to revise an appellate order if invoked at the instance of a dealer or a person when such dealer or person has a remedy by way of an appeal. As noticed earlier, the limitation on**

the suo motu power of the Commissioner as to revise an appellate order has not been expressly provided in the proviso. In the absence of any expressed provisions, no limitation on suo motu power of the Commissioner to revise an appellate order can be implied. We accordingly hold that the provisions of proviso to sub-section (4)(a) of Section23 of the Act do not prohibit the Commissioner to exercise suo motu revisional power to revise an appellate order."

The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in brining the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4.9.2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of 5-1/2 years.

Question of limitation being a jurisdictional question, the writ petition was maintainable.

The Additional Director Consolidation of Holdings has not assigned any reason for accepting the revision and he had only reiterated the submissions of the learned counsel appearing on behalf of respondent No.2. He was required to pass a speaking order reflecting due application of mind. Their Lordships of the Hon'ble Supreme Court had held in the following cases that the orders passed by the quasi-judicial authorities must be supported by reasons.

The Hon'ble Supreme Court has held in ***M/s Travancore Rayons Ltd.*** *v.* ***The Union of India and others***, AIR 1971 Supreme Court 862 that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power. Their Lordships have held as under:-

"In this case the communication from the Central Government gave no reasons in support of the order; the appellate Company is merely intimated thereby that the

Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

Their Lordships of the Hon'ble Supreme Court have held in ***The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and another, AIR 1976, Supreme Court 1785*** that quasi-judicial order must be supported by reasons. Their Lordships have held as under:-

"Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial

function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Tessteels Ltd., C.A. No.245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would,

therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs Authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

The upshot of the above discussion is that:

i) **the Additional Director, Consolidation has exceeded his jurisdiction by accepting the revision petition filed by respondent No.2 after a period of 10 years;**

ii) **the order dated 29.12.2001 is not a speaking order.**

Consequently, the writ petition is allowed. The order dated 29.12.2001 is quashed and set aside. There shall be no order as to costs.

(Rajiv Sharma), Judge

December 26 , 2007
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